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05/30/2006

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

This office action is in reply to the amendment filed April 24, 2006. Claims 1-3 are considered on the merits in this application and claims 4-11 are withdrawn as being drawn to a non-elected invention per the previous office action mailed on 03/29/2006.

Election/Restrictions

Applicant's election with traverse of Species I in the reply filed on April 24, 2006 is acknowledged. The traversal is on the ground(s) that claims 5 and 7 are included in species I. This is not found persuasive because Claim 5 adds the element of a cross brace which is not shown in Species I, Figures 2 and 3. Species II includes claim 5 as clearly Figures 4 and 5 show a cross brace. Claim 7 adds the element of feet under the base which is not shown in Species I, Figures 2 and 3. Species IV and V would include claim 7 as they clearly show feet under a flat base. Therefore species I includes only claims 1-3.

The requirement is still deemed proper and is therefore made FINAL.

Claims 4-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 24, 2006.

This application contains claims 4-11 drawn to an invention nonelected with traverse in the reply filed on April 24, 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Sorkin (6684595).

In regards to claim 1: Sorkin discloses a rebar spacer (130; Figure 8) comprising, a clip (136) having a bottom portion with a "U" shaped rebar receiving portion (138) approximating the diameter of a rebar (where rebar diameters range from .375 inches for a #3 to 2.257 inches for a #18 rebar), that is capable of cradling a rebar, a pair of columns (140) on either side of the "U" shaped rebar receiving portion and extending upward therefrom (Col. 7, lines 66-67), a cross portion (142 and 144) on each column extending toward the opposing column (Col. 7, line 67 – Col. 8, line 4), an arm (146 and 148) extending angularly downward from the cross portion toward the center of the "U" shaped rebar receiving portion and having an end at a height approximately the diameter of a rebar above the opposing wall of the "U" shaped rebar receiving portion (where rebar diameters have a large range from very small diameters to very large diameters) to prevent the rebar from being removed from the "U" shaped rebar

receiving portion, a base (132 and 134) portion attached to the base of the clip for supporting the clip at a desired height.

In regards to claim 2: The rebar spacer as in claim 1 above, wherein the base portion has a flat base (132), a left wall (Figure 8) extending from the flat base to the bottom of the clip and center wall (Figure 8) extending from the base to the bottom of the clip and a right wall (Figure 8) extending from the flat base to the bottom of the clip.

In regards to claim 3: The rebar spacer as in claim 2 above, wherein the left and right walls are slanted inward from the edge of the flat base to the sides of the clip (Figure 8), and the center wall is perpendicular to the flat base and the base of the clip (Figure 8).

Response to Arguments

Applicant's arguments filed April 24, 2006 have been fully considered but they are not persuasive.

Applicant argues that the claims have been amended to distinguish over Sorkin, as Sorkin does not have a U shaped base which cradles the rebar so it can't move and arms which have a bottom portion for engaging the top of the rebar in the cradle so that the rebar can't push the arms aside and jump out of the cradle and the clip. Examiner disagrees with applicant's arguments. Sorkin does have a U shaped base which cradles the rebar so it can't move (Figure 8, elements 140 and 138, where 138 is the bottom of the U shape; col. 8, line 1). Sorkin also discloses arms (elements 146 and 148), which have a bottom portion for engaging the top of the rebar in the cradle so that the rebar can't push the arms aside and jump out of the cradle and the clip. Rebar

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comes in a wide range of diameters from .375 inch to 2.257 inches and therefore the arms as disclosed by Sorkin are capable of ending above the rebar in the case where a very small diameter rebar is used. As such applicant's invention fails to distinguish over Sorkin.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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05/16/2006


N. Steck
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